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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,194	10/08/2003	Benjamin P. Reese	2846-0276P	5401

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EXAMINER	
BARFIELD, ANTHONY DERRELL	
ART UNIT	**PAPER NUMBER**
3636	

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/680,194	REESE, BENJAMIN P.	
	Examiner	Art Unit	
	Anthony D Barfield	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 September 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3,7,9-11,15, are rejected under 35 U.S.C. 102(e) as being anticipated by Tseng. Tseng shows the use of a chair (4) comprising a support assembly with a first leg set (41); a second leg set located between and pivoted to the first leg bars (Fig. 5); a backrest having lower ends pivoted to the second leg bars and rotatable with respect to the support assembly to selectively change a tilting angle of the backrest with respect to the support assembly; and a slide (31) movably over and "receiving therein" a free end of each first leg bar and pivoted to the backrest, the slide further comprising fastening means (415,612) to selectively secure the tubular slide with respect to the first leg bar thereby releasably securing the backrest with respect to the support assembly. (see Fig. 6). Tseng shows the use of a constraint element (32) to prevent the slide from sliding off the bar.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 12-14 and 17-18 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng in view of Wang. Tseng shows all of the teachings of the claimed invention except the use of the U shaped back telescopically received by a pair of back bars. Wang shows the conventional use of a back bar (5) which receives respective limbs (31) of a U-shaped backrest. It would have been a mere reversal of parts to modify the limbs of the backrest to be received by the back bar, since it has been held that a mere reversal of parts is well within the scope of one ordinary skill in the art. In regards to claims 17-18, Tseng shows a lug which pivotally receives the second leg set but fails to show a lug having a cylindrical projection to receive the backrest. Wang shows the use of a lug (5) having a cylindrical projection (51) to receive the backrest. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the chair of Tseng with the teachings of Wang, in order to allow the backrest to selectively pivot forward as well as rearward.

5. Claims 8 and 16 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng. Tseng shows all of the teachings of the claimed invention except the use of an armrest pad and expanded spheres on each leg bar. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the chair of Tseng with an armrest pad and expanded spheres, since it has been held that an omission of an element and its function in a combination where the remaining elements perform the same function as before only involves routine skill in the art. *In re Karlson*, 136 USPQ 184.

Allowable Subject Matter

6. Claims 4-6 are allowable over the prior art made of record.

7. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed 9/30/04 have been fully considered but they are not persuasive. In response to applicant's argument that the reference fails to show the front legs "within" the slide and not extending therethrough, the examiner is of the opinion that in fact the slide of Tseng does in fact receive the front legs "within" so far as defined by the claimed invention and it is irrelevant whether they extend completely through the slide as the limitation of not extending therethrough is not positively claimed.

9. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teachings of Wang will allow the seat of Tseng to pivot forward as well as rearward.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Barfield whose telephone number is 703-308-2158. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony D Barfield
Primary Examiner
Art Unit 3636

adb
December 04, 2004